

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 1379  
OFFERED BY M . \_\_\_\_\_**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Ensuring Lasting  
3 Smiles Act”.

**4 SEC. 2. COVERAGE OF CONGENITAL ANOMALY OR BIRTH  
5 DEFECT.**

6 (a) PUBLIC HEALTH SERVICE ACT AMENDMENTS.—

7 (1) IN GENERAL.—Title XXVII of the Public  
8 Health Service Act is amended by inserting after  
9 section 2729 (42 U.S.C. 300gg-28), the following:

**10 “SEC. 2730. STANDARDS RELATING TO BENEFITS FOR CON-  
11 GENITAL ANOMALY OR BIRTH DEFECT.**

12 “(a) REQUIREMENTS FOR CARE AND RECONSTRUC-  
13 TIVE TREATMENT.—

14 “(1) IN GENERAL.—A group health plan, and a  
15 health insurance issuer offering group or individual  
16 health insurance coverage, shall provide coverage for  
17 outpatient and inpatient items and services related

1 to the diagnosis and treatment of a congenital  
2 anomaly or birth defect.

3 “(2) REQUIREMENTS.—

4 “(A) IN GENERAL.—Coverage provided  
5 under paragraph (1) shall include any medically  
6 necessary item or service to functionally im-  
7 prove, repair, or restore any body part to  
8 achieve normal body functioning or appearance,  
9 as determined by the treating physician (as de-  
10 fined in section 1861(r) of the Social Security  
11 Act), due to congenital anomaly or birth defect.

12 “(B) FINANCIAL REQUIREMENTS AND  
13 TREATMENT REQUIREMENTS.—Any coverage  
14 provided under paragraph (1) under a group  
15 health plan or individual or group health insur-  
16 ance coverage offered by a health insurance  
17 issuer may be subject to coverage limits (such  
18 as medical necessity, pre-authorization, or pre-  
19 certification) and costsharing requirements  
20 (such as coinsurance, copayments, and  
21 deductibles), as required by the plan or issuer,  
22 that are no more restrictive than the predomi-  
23 nant coverage limits and costsharing require-  
24 ments, respectively, applied to substantially all

1 medical and surgical benefits covered by the  
2 plan (or coverage).

3 “(3) TREATMENT DEFINED.—In this section:

4 “(A) IN GENERAL.—Except as provided in  
5 subparagraph (B), the term ‘treatment’ in-  
6 cludes, with respect to a group health plan or  
7 health insurance coverage offered by a health  
8 insurance issuer, inpatient and outpatient items  
9 and services performed to improve, repair, or  
10 restore bodily function (or performed to approx-  
11 imate a normal appearance), due to a con-  
12 genital anomaly or birth defect and includes  
13 treatment to any and all missing or abnormal  
14 body parts, (including teeth, the oral cavity,  
15 and their associated structures) that would oth-  
16 erwise be provided under the plan or coverage  
17 for any other injury or sickness, including—

18 “(i) any items or services, including  
19 inpatient and outpatient care, reconstruc-  
20 tive services and procedures, and complica-  
21 tions thereof;

22 “(ii) adjunctive dental, orthodontic or  
23 prosthodontic support from birth until the  
24 medical or surgical treatment of the defect  
25 or anomaly has been completed, including

1 ongoing or subsequent treatment required  
2 to maintain function or approximate a nor-  
3 mal appearance;

4 “(iii) procedures that materially im-  
5 prove, repair, or restore bodily function;  
6 and

7 “(iv) procedures for secondary condi-  
8 tions and follow-up treatment associated  
9 with the underlying congenital anomaly or  
10 birth defect.

11 “(B) EXCEPTION.—The term ‘treatment’  
12 shall not include cosmetic surgery performed to  
13 reshape normal structures of the body to im-  
14 prove appearance or self-esteem.

15 “(b) NOTICE.—A group health plan under this part  
16 shall comply with the notice requirement under section  
17 714(c) of the Employee Retirement Income Security Act  
18 of 1974 with respect to the requirements of this section  
19 as if such section applied to such plan.”.

20 (2) TECHNICAL AMENDMENTS.—

21 (A) Section 2724(c) of the Public Health  
22 Service Act (42 U.S.C. 300gg-23(c)) is amend-  
23 ed by striking “section 2704” and inserting  
24 “sections 2725 and 2730”.

1 (B) Section 2762(b)(2) of the Public  
2 Health Service Act (42 U.S.C. 300gg–62(b)(2))  
3 is amended by striking “section 2751” and in-  
4 serting “sections 2730 and 2751”.

5 (b) ERISA AMENDMENTS.—

6 (1) IN GENERAL.—Subpart B of part 7 of sub-  
7 title B of title I of the Employee Retirement Income  
8 Security Act of 1974 is amended by adding at the  
9 end the following:

10 **“SEC. 716. STANDARDS RELATING TO BENEFITS FOR CON-**  
11 **GENITAL ANOMALY OR BIRTH DEFECT.**

12 “(a) REQUIREMENTS FOR RECONSTRUCTIVE TREAT-  
13 MENT.—

14 “(1) IN GENERAL.—A group health plan, and a  
15 health insurance issuer offering group or individual  
16 health insurance coverage, shall provide coverage for  
17 outpatient and inpatient services related to the diag-  
18 nosis and treatment of a congenital anomaly or birth  
19 defect.

20 “(2) REQUIREMENTS.—Coverage provided  
21 under paragraph (1) shall include any service to  
22 functionally improve, repair, or restore any body  
23 part that is medically necessary to achieve normal  
24 body functioning or appearance, as determined by  
25 the treating physician (as defined in section 1861 of

1 the Social Security Act). Any coverage provided  
2 under such paragraph may be subject to coverage  
3 limits, such as pre-authorization or pre-certification,  
4 as required by the plan or issuer that are no more  
5 restrictive than the predominant treatment limita-  
6 tions applied to substantially all medical and sur-  
7 gical benefits covered by the plan (or coverage).

8 “(3) TREATMENT DEFINED.—

9 “(A) IN GENERAL.—Except as provided in  
10 subparagraph (B), in this section, the term  
11 ‘treatment’ includes patient and outpatient care  
12 and services performed to improve or restore  
13 body function (or performed to approximate a  
14 normal appearance), due to congenital anomaly  
15 or birth defect and shall include treatment to  
16 any and all missing or abnormal body parts,  
17 (including teeth, the oral cavity, and their asso-  
18 ciated structures) that would otherwise be pro-  
19 vided under the plan or coverage for any other  
20 injury and sickness, including—

21 “(i) inpatient and outpatient care, re-  
22 constructive services and procedures, and  
23 complications thereof, including prosthetics  
24 and appliances;

1                   “(ii) adjunctive dental, orthodontic or  
2                   prosthodontic support from birth until the  
3                   medical or surgical treatment of the defect  
4                   or anomaly has been completed, including  
5                   ongoing or subsequent treatment required  
6                   to maintain function or approximate a nor-  
7                   mal appearance;

8                   “(iii) procedures that do not materi-  
9                   ally restore or improve the function of the  
10                  body part being treated; and

11                  “(iv) procedures for secondary condi-  
12                  tions and follow-up treatment.

13                  “(B) EXCEPTION.—The term ‘treatment’  
14                  shall not include cosmetic surgery performed to  
15                  reshape normal structures of the body to im-  
16                  prove appearance or self-esteem.

17                  “(b) NOTICE UNDER GROUP HEALTH PLAN.—The  
18                  imposition of the requirements of this section shall be  
19                  treated as a material modification in the terms of the plan  
20                  described in the last sentence of section 102(a), for pur-  
21                  poses of assuring notice of such requirements under the  
22                  plan, except that the summary description required to be  
23                  provided under the fourth sentence of section 104(b)(1)  
24                  with respect to such modification shall be provided by not

1 later than 60 days after the first day of the first plan  
2 year in which such requirements apply.”.

3 (2) TECHNICAL AMENDMENTS.—

4 (A) Section 731(c) of such Act (29 U.S.C.  
5 1191(c)) is amended by striking “section 711”  
6 and inserting “sections 711 and 716”.

7 (B) Section 732(a) of such Act (29 U.S.C.  
8 1191a(a)) is amended by striking “section 711”  
9 and inserting “sections 711 and 716”.

10 (C) The table of contents in section 1 of  
11 such Act is amended by inserting after the item  
12 relating to section 714 the following new items:

“Sec. 715. Additional market reforms.

“Sec. 716. Standards relating to benefits for congenital anomaly or birth de-  
fect.”.

13 (c) INTERNAL REVENUE CODE AMENDMENTS.—

14 (1) IN GENERAL.—Subchapter B of chapter  
15 100 of the Internal Revenue Code of 1986 is amend-  
16 ed by adding at the end the following:

17 **“SEC. 9816. STANDARDS RELATING TO BENEFITS FOR CON-**  
18 **GENITAL ANOMALY OR BIRTH DEFECT.**

19 “(a) REQUIREMENTS FOR RECONSTRUCTIVE TREAT-  
20 MENT.—A group health plan, and a health insurance  
21 issuer offering group or individual health insurance cov-  
22 erage, shall provide coverage for outpatient and inpatient  
23 services related to the diagnosis and treatment of a con-  
24 genital anomaly or birth defect.

1       “(b) REQUIREMENTS.—Coverage provided under  
2 subsection (a) shall include any service to functionally im-  
3 prove, repair, or restore any body part that is medically  
4 necessary to achieve normal body functioning or appear-  
5 ance, as determined by the treating physician (as defined  
6 in section 1861 of the Social Security Act). Any coverage  
7 provided under such subsection may be subject to coverage  
8 limits, such as pre-authorization or pre-certification, as re-  
9 quired by the plan or issuer that are no more restrictive  
10 than the predominant treatment limitations applied to  
11 substantially all medical and surgical benefits covered by  
12 the plan (or coverage).

13       “(c) TREATMENT DEFINED.—

14               “(1) IN GENERAL.—Except as provided in para-  
15 graph (2), in this section, the term ‘treatment’ in-  
16 cludes patient and outpatient care and services per-  
17 formed to improve or restore body function (or per-  
18 formed to approximate a normal appearance), due to  
19 congenital anomaly or birth defect and shall include  
20 treatment to any and all missing or abnormal body  
21 parts, (including teeth, the oral cavity, and their as-  
22 sociated structures) that would otherwise be pro-  
23 vided under the plan or coverage for any other in-  
24 jury and sickness, including—

1           “(A) inpatient and outpatient care, recon-  
2           structive services and procedures, and complica-  
3           tions thereof, including prosthetics and appli-  
4           ances;

5           “(B) adjunctive dental, orthodontic or  
6           prosthodontic support from birth until the med-  
7           ical or surgical treatment of the defect or  
8           anomaly has been completed, including ongoing  
9           or subsequent treatment required to maintain  
10          function or approximate a normal appearance;

11          “(C) procedures that do not materially re-  
12          store or improve the function of the body part  
13          being treated; and

14          “(D) procedures for secondary conditions  
15          and follow-up treatment.

16          “(2) EXCEPTION.—The term ‘treatment’ shall  
17          not include cosmetic surgery performed to reshape  
18          normal structures of the body to improve appearance  
19          or self-esteem.”.

20          (2) CLERICAL AMENDMENT.—The table of sec-  
21          tions for such subchapter is amended by adding at  
22          the end the following new items:

“Sec. 9815. Additional market reforms.

“Sec. 9816. Standards relating to benefits for congenital anomaly or birth de-  
fect.”.

23          (d) CLARIFYING AMENDMENT REGARDING APPLICA-  
24          TION TO GRANDFATHERED PLANS.—Section

1 1251(a)(4)(A) of the Patient Protection and Affordable  
2 Care Act (42 U.S.C. 18011(a)(4)(A)), is amended by add-  
3 ing at the end the following:

4 “(v) Section 2730 (relating to stand-  
5 ards relating to benefits for congenital  
6 anomaly or birth defect), as added by sec-  
7 tion 2(a) of the Ensuring Lasting Smiles  
8 Act.”.

9 (e) EFFECTIVE DATE.—The amendments made by  
10 this section shall apply with respect to group health plans  
11 for plan years beginning on or after January 1, 2021, and  
12 with respect to health insurance coverage offered, sold,  
13 issued, renewed, in effect, or operated in the individual  
14 market on or after such date.

15 (f) COORDINATED REGULATIONS.—Section 104(1) of  
16 the Health Insurance Portability and Accountability Act  
17 of 1996 is amended by striking “this subtitle (and the  
18 amendments made by this subtitle and section 401)” and  
19 inserting “the provisions of part 7 of subtitle B of title  
20 I of the Employee Retirement Income Security Act of  
21 1974, the provisions of parts A and C of title XXVII of  
22 the Public Health Service Act, and chapter 100 of the In-  
23 ternal Revenue Code of 1986”.

